

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID STEPHENS,

Petitioner,

v.

04-CV-1443

SUPERINTENDENT,

Respondent.

THOMAS J. McAVOY
United States District Judge

DECISION and ORDER

This matter brought pursuant to 28 U.S.C. § 2254 was referred to the Hon. Victor E. Bianchini, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

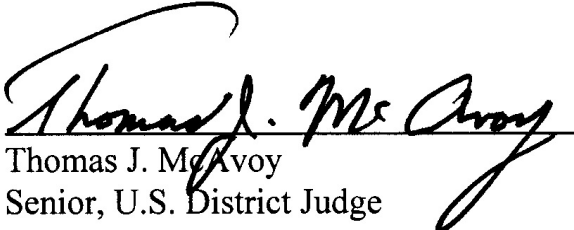
No objections to the January 23, 2008 Report-Recommendation have been raised. Although Petitioner initially filed a Notice of Appeal of the Report-Recommendation, Petitioner withdrew the Notice of Appeal. Dkt. No. 21. In the letter from Petitioner's counsel, she expressly states that Petitioner intends to re-file a Notice of Appeal once the final determination from this Court is issued. At no time did Petitioner's counsel express an intention or desire to file objections to the Report-Recommendation or request an extension of time in which to file objections notwithstanding the notice in the Report-Recommendation warning of the failure to timely file objections or request an extension of time.

After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein and **DISMISSES** the petition.

IT IS SO ORDERED.

Dated: March 19, 2008


Thomas J. McAvoy
Senior, U.S. District Judge